

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7371 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MIYANA MARIYAMBEN SULEMAN SAMAT

Versus

STATE OF GUJARAT

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Appearance:

Mr. H.L.Prajapati for M/S THAKKAR ASSOC. for Petitioner  
MR L.R.Pujara, A.P.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 9th April, 1996 passed by the District Magistrate, Jamnagar, detaining the petitioner under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA Act" for short). The detention order was executed on the same day i.e. 9th April, 1996 and since then the petitioner is under detention lodged at District Jail at Rajkot.

This Special Civil Application was filed in this Court on 27th July, 1996 and rule returnable by 15th October 1996 was issued on 30th September, 1996. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

The grounds of detention enclosed with the detention order show that as many as 23 criminal cases under Prohibition Act were registered against the petitioner and were pending trial in Court. The detaining authority after noticing the allegations of these criminal cases has mentioned that the petitioner was engaged in the business of manufacture and sale of unauthorized country liquor; was engaged in antisocial activities. The detaining authority has also recorded that on account of the antisocial activities of the petitioner she has created terror in the area and there was a feeling of insecurity amongst the public; that she is a known bootlegger in the area and it is also recorded in the police records. According to the detaining authority, the petitioner has thus become a problem for the public order as she had created terror. The detaining authority has also noticed that the witnesses have requested that their identity be kept secret because they are frightened and afraid of the petitioner and on these grounds the detaining authority has invoked Section 9(2) of the PASA Act to withhold the identity of the witnesses. Having been satisfied from the aforesaid reasons that the petitioner was a problem to the public order and having considered that the proceedings of externment may not be expedient in the facts of this case, in order to prevent the petitioner from continuing her antisocial activities the detaining authority felt that it was necessary to detain the petitioner and accordingly the detention order was passed.

Although the detention order has been challenged on more than one grounds, the learned Counsel for the petitioner has laid stress on the ground that the allegations as have been levelled against the petitioner even if taken to be true on its face value do not constitute a case of breach of public order. The learned Counsel has contended that at the most it can be said to be a breach of law and order and the detention order therefore deserves to be quashed and set aside on this ground alone.

I have considered the allegations and materials relied upon against the petitioner by the detaining

authority while passing the impugned detention order. On 4th October, 1996 itself a detailed order has been passed in Spl.Civil Application no.3879/1996 in which a considered view has been taken on the basis of the ratio decidendi of several Supreme Court decisions and the decision of this Court that the allegations and materials such as has been relied upon in the present case do not constitute a case of breach of public order and at the most it can be said to be a breach of law and order. The aforesaid decision applies on the facts of this case with full force and I find that the impugned order of detention has been passed on the collateral ground of law and order. In absence of any ingredients of the breach of public order, the impugned detention order deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 9th April, 1996 passed by the District Magistrate, Surendranagar is hereby quashed and set aside. The detention of the petitioner is declared to be illegal. The respondents are directed to release the petitioner and set her at liberty forthwith, if not required in any other case. Rule is made absolute.

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